Yong Pik Sing v The Pengarah, Pusat Pemulihan Akhlak & Anor

HIGH COURT (SIBU) — CRIMINAL APPLICATION NO 44–7 OF 1999
TEE AH SING J
14 OCTOBER 1999

Preventive Detention *— Detention order — Detention under Dangerous Drugs (Special Preventive Measures) Act 1985 — Time lag between prejudicial activities and date of detention not explained — Amendment of law creates new offence — Consideration by Minister of applicant's trafficking activities prior to amendment — Whether irrelevant and extraneous — Whether Minister acted mechanically and arbitrarily — Dangerous Drugs (Special Preventive Measures) Act 1985 s 6(1) — Dangerous Drugs (Amendment) Order 1997*

This was an application for a writ of habeas corpus and had been consolidated with two other similar applications, namely 44–8–99 and 44–9–99. The applicant had been arrested and detained under a detention order issued by the Minister made pursuant to s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The allegations of facts which were made known to the applicant was that the applicant was involved in activities of trafficking 'syabu' which contained methamphetamine from end of 1996 till December 1998. The applicant in 44–8–99 submitted that there was a lag of time between the prejudicial activities (March 1998) and the date of detention (March 1999).

Held, allowing the applications:

(1) The time lag of about one-year must be explained. There was no affidavit affirmed by the Minister to explain the delay. Since there was no explanation for the delay, the subjective satisfaction of the Minister must be held to not genuine or colourable (see p 8C–D, H–I).

(2) By virtue of the Dangerous Drugs (Amendment) Order 1997, the possession of or trafficking in methamphetamine prior to 29 November 1997 was not an offence under the Dangerous Drugs Act 1952. The position prior to 29 November 1997 was that the Minister could not exercise his power under s 6(1) of the Act to sign an order of detention against anyone for trafficking in methamphetamine. The Minister did not state in his affidavit that, omitting the allegation of facts that occurred prior to 29 November 1997, he would still have made the detention order based on facts that occurred after 29 November 1997. Therefore, the satisfaction of the Minister was based on irrelevant and extraneous matter in that he took into consideration the period of the activities of the applicant from the end of 1996 to 28 November 1997 when such activities were not contrary to law prior to 29 November 1997. Further, if the Minister had applied his mind to the grounds, he would have discovered that the period prior to 29 November 1997 should not be taken into

consideration. This glaring mistake showed that the Minister treated the signing of the order in a casual and cavalier manner. Therefore, the Minister had acted mechanically and arbitrarily when he had taken into account extraneous or irrelevant material which the law did not contemplate he should consider and he had purported to exercise his powers beyond the ambit of s 6(1) of the Act. As such, there was no strict compliance with the law (see pp 9B–D, 11F–I).

[Bahasa Malaysia summary

Ini adalah permohonan habeas corpus dan ia telah disatukan dengan dua permohonan sama yang lain, iaitu 44–8–99 dan 44–9–99. Pemohon telah ditangkap dan ditahan di bawah perintah penahanan yang dikeluarkan oleh Menteri yang dibuat menurut s 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 ('Akta tersebut'). Pengataan fakta-fakta yang telah diketahui oleh pemohon adalah bahawa pemohon adalah terlibat di dalam aktiviti mengedar 'syabu' yang mengandungi methamphetamine dari akhir 1996 sehingga Disember 1998. Pemohon di dalam 44–8–99 menghujahkan yang terdapat selang masa antara aktiviti-aktiviti prejudis (Mac 1998) dan pada hari penahanan (Mac 1999).

Diputuskan, membenarkan permohonan tersebut:

(1) Selang masa lebih kurang setahun mestilah dijelaskan. Tiada afidavit yang diikirarkan oleh Menteri untuk menjelaskan kelengahan tersebut. Oleh kerana tiada penjelasan untuk kelengahan tersebut, kepuasan subjektif Menteri mestilah diputuskan sebagai tidak benar atau memprangsangkakan (lihat ms 8C–D, H–I)

(2) Menurut Perintah Dadah Berbahaya (Pindaan) 1997, milikan atau mengedar methamphetamine sebelum 29 November 1997 bukanlah suatu kesalahan di bawah Akta Dadah Berbahaya 1952. Kedudukan sebelum 29 November 1997 adalah Menteri tidak boleh melaksanakan kuasanya di bawah s 6(1) Akta untuk menandatangani suatu perintah penahanan terhadap sesiapa untuk mengedar methamphetamine. Menteri tidak menyatakan di dalam afidavit bahawa, tanpa mengambilkira pengataan fakta-fakta yang berlaku sebelum 29 November 1997, beliau akan tetap membuat perintah penahanan berdasarkan fakta-fakta yang berlaku selepas 29 November 1997. Oleh itu, kepuasan Menteri adalah berdasarkan perkara yang tidak berkaitan dan luaran di mana beliau telah mempertimbangkan tempoh aktiviti-aktiviti pemohon dari akhir 1996 ke 28 November 1997 di mana aktiviti-aktiviti sebegini adalah tidak bercanggah dengan undang-undang sebelum 29 November 1997. Selanjutnya, jika Menteri telah mempertimbangkan alasan-alasan, beliau akan mendapati bahawa tempoh masa sebelum 29 November 1997 tidak patut

dipertimbangkan. Kesilapan jelas ini menunjukkan bahawa Menteri tersebut telah menandatangani perintah tersebut dengan cara yang tidah endah dan biasa. Oleh itu, Menteri telah bertindak secara mekanikal dan arbitrari apabila beliau mengambilkira perkara luaran dan tidak berkaitan yang mana undang-undang tidak mengatakan beliau patut pertimbangkan dan beliau telah dikatakan melaksanakan kuasanya melampaui lingkungan s 6(1) Akta tersebut. Oleh itu, tidak terdapat pematuhan tegas undang-undang (lihat ms9B–D, 11F–I).]

Notes

For cases on detention order generally, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1110–1207.

Cases referred to

Application of Tan Boon Liat @ Allen, Re; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors [1976] 2 MLJ 83 (refd)

Chua Lee Huat v Timbalan Menteri Dalam Neqeri, Malaysia [1997] 2 MLJ 395 (refd)

Dwarka Das Bhatia v The State of J & K AIR 1957 SC 164 (refd)

Patto all Perumal v Menteri Hal Ehwal Dalam Negeri & Anor [1989] 1 MLJ 255 (refd)

S Selvaraja T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1997] 2 CLJ Supp 275 (refd)

SK Serajul v State of West Bengal AIR 1975 SC 1517 (refd)

Legislation referred to

Dangerous Drugs Act 1952 s 2, Part III of the First Schedule to the DDA, Dangerous Drugs (Amendment) Order 1997 (PU(A) 500)

Dangerous Drugs (Special Preventive Measures) Act 1985 ss 6(1), s 9(2)(b), 11C

Joseph Tang (*Tang & Co*) for the applicant.

Mohamad Abazafree Mohd Abbas (Federal Counsel) for the respondents.

Cur Adv Vult

Tee Ah Sing J: This is an application for a writ of habeas corpus and has been consolidated with two other similar applications, namely 44–8–99 and 44–9–99.

At the commencement of the hearing on 5 July 1999, it had been agreed by both Mr Joseph Tang counsel for all the applicants and Mr Mohamad Abazafree bin Mohd Abbas, Federal Counsel, for the respondents, that the above two applications would be bound by the decision of the court in this application.

The applicant, Yong Pik Sing, had been arrested and detained under a detention order issued by Dato' Ong Ka Ting, the Timbalan Menteri

Dalam Negeri, Malaysia ('the Timbalan Menteri') made pursuant to s 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 ('the Act'). The provision reads as follows:

(1) Whenever the Minister, after considering —
(a) the complete report of investigation submitted under sub-s (3) of s 3; and
(b) the report of the Inquiry Officer submitted under sub-s (4) of s 5,

is satisfied with respect to any person that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order (hereinafter referred to as a 'detention order') direct that such person be detained for a period not exceeding two years.

The detention order states:

AKTA DADAH BERBAHAYA
(LANGKAH-LANGKAH PENCEGAHAN KHAS) 1985
(Akta 316)
Perintah Tahanan
(Seksyen 6 (1))

Kepada:

Penguasa,
Pusat Pumulihan Akhlak,
Simpang Rengam, Johor,

Ketua Polis Negara,
Bukit Aman,
50560 Kuala Lumpur.

Semua Pegawai Polis Di Raja Malaysia yang berkenaan.

Bahawasanya, selepas menimbangkan laporan lengkap penyiasatan dan laporan Pegawai Siasatan yang dikemukakan saya adalah berpuashati bahawa orang yang tersebut di bawah ini pernah ada/sedang ada kaitan dengan aktiviti yang berhubungan dengan/yang melibatkan pengedaran dadah berbahaya:

Dan bahawasanya saya adalah berpuashati bahawa bagi kepentingan ketenteraman awam orang yang tersebut perlu ditahan.

Nama	*Nombor Kad Pengenalan*
Yong Pik Sing	740427-13-5435 (K0370902)

Maka, oleh yang demikian, pada menjalankan kuasa-kuasa yang diberi oleh seksyen 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985, saya dengan ini mengarahkan supaya orang tersebut ditahan selama tempoh dua (2) tahun mulai dari tarikh Perintah ini di Pusat pemulihan Akhlak Simpang Rengam, Johor atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 9 haribulan Mac 1999.

tt (Dato' Ong Ka Ting)
Timbalan Menteri Dalam Negeri,
Malaysia.

A The grounds for the detention order read as follows:

> Alasan-alasan yang atasnya Perintah itu dibuat:
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> Bahawa kamu pernah ada kaitan dengan apa-apa aktiviti yang berhubungan atau yang melibatkan pengedaran dadah berbahaya.

B And the allegations of facts which were made known to the applicant pursuant to s 9(2)(b) of the Act states:

> Tuduhan-tuduhan yang atasnya Perintah itu diasaskan:
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> (1) Bahawa kamu adalah seorang pengedar syabu yang mengandungi dadah berbahaya jenis Methamphetamine di kawasan bandar Sibu sejak akhir tahun 1996 sehingga bulan Disember 1998.
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> (2) Bahawa kamu mengedar syabu yang mengandungi dadah berbahaya jenis Methamphetamine dalam bentuk peket berbagai saiz dan dijual dengan harga di antara RM30 ke RM400 sepeket.
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> (3) Bahawa kamu dari akhir tahun 1996 sehingga bulan Disember 1998 telah mendapatkan bekalan syabu yang mengandungi dadah berbahaya jenis
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> D Methamphetamine dalam bentuk peket besar berbagai saiz berharga di antara RM400 ke RM1,200 sepeket daripada pembekal syabu yang mengandungi dadah jenis Methamphetamine di Sibu, Bintulu dan Miri.

Having perused the affidavits and the relevant exhibits filed therein on behalf of the applicant and the respondents and having heard the
E submission of learned counsel for the applicant and the learned Federal Counsel for the respondents, I now give my judgment.

I will first deal with the law.

In *Chua Lee Huat v Timbalan Menteri Dalam Negeri, Malaysia* [1997] 2 MLJ 395, his lordship Vincent Ng J at p 397 said:

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> It is trite law that though the court may not examine the allegations of fact against a detainee, it may look at the grounds of the detention. See *Jamaluddin bin Othman* [1989] 1 MLJ 368 (upheld by the (then) Supreme Court) and *Minister for Home Affairs Malaysia & Anor v Karpal Singh* [1988] 3 MLJ 29 (at p 31C).

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> Before me, the main thrust of the Federal Counsel's submission centered around his contention that the detention was within the ambit of s 4(1) of the Ordinance, and so long as the Minister had applied his mind to the general purpose of s 4(1), ie for the preservation of public order, it did not matter under which limb of sub-s (1) the detention order was issued.

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> With due respect, the federal counsel has missed the essence of the issue here. The question before this court was not whether the Minister had acted within the scope or ambit of the empowering provision — namely, s 4(1) of the Ordinance — but whether the Minister had applied his mind in the exercise of his extraordinary powers to detain a person without trial, considering the manner in which such powers were exercised, as reflected on the face of the order itself. It is settled law that a detainee is free to attempt to impugn the legality of his detention by raising — through the process of judicial review - the question as to whether the Minister has acted within the powers conferred in the particular case and whether the power to detain has been properly exercised. And, it is axiomatic that since the courts are

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precluded from delving into the mind of the Minister (often termed as 'subjective discretion' or 'satisfaction of the Minister'), the only means by which the courts could ascertain whether the Minister had abused his powers (eg in a mechanical or arbitrary exercise of such powers) would be to look at the face of the order itself as juxtaposed with the grounds of the detention.

It is a correct statement of the law to say that the act of the Timbalan Menteri in making the detention order cannot be questioned, as the same is beyond the purview of challenge on any question, save in regard to a question on compliance with any procedural requirement in the Act governing that act: see s 11C of the Act.

I shall next deal with Criminal Application No 44–8–99 wherein the applicant, Wong Kiih Sing, through his counsel has submitted there was a lag of time between the prejudicial activities and the date of detention.

From ground 1, the last activity of the applicant Wong Kiih Sing was in March 1998. The order of the Timbalan Menteri was dated 9 March 1999. So there was a lapse of nearly one year.

In *S Selvaraja T Singarathevar v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1997] 2 CLJ Supp 275, his lordship Vincent Ng J at p 279 said:

> It is now trite that the question of staleness or remoteness goes to the question of sufficiency or relevancy of the facts, and as such, an enquiry which the court cannot embark on since it entails delving into the mind of or adjudicating the subjective satisfaction of the Minister. (See the judgment of LC Vohrah J in *Chua Teck v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1989] 2 CLJ 414; [1989] 3 MLJ 118 which decision was confirmed by the Supreme Court in *Menteri Hal Ehwal Dalam Negeri Malaysia & Ors v Chua Teck* [1990] 1 CLJ 220; [1990] 1 MLJ 104, per Hashim Yeop A Sani CJ (Malaya)). However, looking at, as opposed to studying (a term decidedly used — as eg studying a *femme fatale*, may not be quite as innocuous a preoccupation as looking at her), the allegation of facts do not necessarily entail delving into the mind of the Minister; least of all, neither does it entail questioning the subjective satisfaction of the Minister in the exercise of this sole discretion to detain a subject.
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> On the issue at hand in the current matter, I find sufficient judicial dicta (though not ratio) to the effect that delay must be explained and it is for the court to decide whether the delay is reasonable under the circumstances. In *Yit Hon Kit v Minister of Home Affairs, Malaysia & Anor* [1988] 2 MLJ 638 Edgar Joseph Jr J (as he then was) has this to say (p 645 at G Col 2).
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> > 'That does not however, determine the matter, for it was also alleged, inter alia, that the grounds of detention do not fall within the scope of the Ordinance and that the conditions precedent for the making of the detention order had not been fulfilled. Most particularly, it was submitted before me that the allegations of fact, the effect of which was that the applicant had returned to Teluk Intan periodically during the years 1983 and 1984 to carry out his criminal activities stipulated therein, were so remote in point of time to the date of the making of the detention order dated 17 February 1986, that in the absence of an explanation for the

delay (and there was none), it could not be said that the conditions precedent for the making of the detention order laid down in s 4(1) had been satisfied.'

In *Patto a/l Perumal v Menteri Hal Ehwal Dalam Negeri & Anor* [1989] 1 MLJ 255, his lordship Wan Adnan J (as he then was) at p 260 said:

Jagan Nath Biswas v State of West Bengal AIR 1975 SC 1516 in which Krishna Iyer J said when dealing with a case where there was a time lag of six months between the date of the detention order and the date of the last incident on which it was based:

> 'The incidents themselves look rather serious but also stale, having regard to the long gap between the occurrences and the order of detention. One should have expected some proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at. This court has repeatedly pointed out that unexplained and long delay will be fatal to the plea of subjective satisfaction.'

I do not agree with the proposition that there ought to be proximity in time to provide a rational nexus between the incidents relied on and the satisfaction arrived at by the minister and that unexplained and long delay will be fatal to the plea of subjective satisfaction.

In *SK Serajul v State of West Bengal* AIR 1975 SC 1517, Bhagwati J said:

> 'Of course when we say this we must not be understood to mean that whenever there is delay in making an order of detention or in arresting the detenu pursuant to the order of detention, the subjective satisfaction of the detaining authority must be held to be not genuine or colourable. Each case must depend on its own peculiar facts and circumstances. The detaining authority may have a reasonable explanation for the delay and that might be sufficient to dispel the inference that its satisfaction was not genuine.'

In *Gora v State of West Bengal*, AIR 1975 SC 473, Bhagwati J said:

> 'There is, therefore, no hard and fast rule that merely because there is a time lag of about six months between the 'offending acts' and the date of the order of detention, the casual link must be taken to be broken and the satisfaction claimed to have been arrived at by the district magistrate must he regarded as sham or unreal. Whether the acts of the detenu forming the basis for arriving at a subjective satisfaction are too remote in point of time to induce any reasonable person to reach such subjective satisfaction must depend on the facts and circumstances of each case. The test of proximity is not a rigid or mechanical test to be blindly applied by merely counting the number of months between the 'offending acts' and the order of detention. It is a subsidiary test evolved by the court for the purpose of determining the main question whether the past activity of the detenu is such that from it reasonable prognosis can be made as to the future conduct of the detenu and its utility, therefore, lies only in so far as it subserves that purpose and it cannot be allowed to dominate or drown it. The prejudicial act of the detenu may in a given case be of such a character as to suggest that it is a part of an organized operation of a complex of agencies collaborating to clandestinely and secretly carry on such activities and in such a case the detaining authority may reasonably

> feel satisfied that the prejudicial act of the detenu which has come to light cannot be a solitary or isolated act, but must be part of a course of conduct of such or similar activities clandestinely or secretly carried on by the detenu and it is, therefore, necessary to detain him with a view to preventing him from indulging in such activities in the future.'
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> In the present case, the detention order was made by the minister on 24 December 1987. The date of the last incident in the statement of the allegations of fact was 2 August 1985. There was therefore a time lag of more than two years. I hold that unless there is a satisfactory explanation for the delay the subjective satisfaction of the minister must be held to be not genuine or colourable.

So in our case, there was a time lag of about one year. And this delay must be explained.

The learned federal counsel for the respondents submitted that since the applicant did not aver in his affidavit that the allegations of facts were too remote in point of time and there must be proximity in time there was no need for the Timbalan Menteri to explain the delay. I reject this contention. For in *SK Serajul v State of West Bengal* AIR 1975 SC 1517, Bhagwati J said (at pp 1517–1518):

> But here we find that though an affidavit in reply to the petition was filed by the Deputy Secretary Home (Special) Department, Government of West Bengal, no explanation was forthcoming in this affidavit as to why the order of detention was made as late as 24 August 1972 when the last incident on which it was founded occurred on 15 January 1972 and why the petitioner was not arrested until 22 February 1973, though the order of detention was made on 24 August 1972. Mr Chatterjee, learned counsel appearing on behalf of the State of West Bengal, contended that the State was not expected to render any explanation in regard to the delay in making the order of detention and arresting the petitioner because no such complaint was made in the petition. But this is hardly an argument which can avail the State when it is called upon to answer a rule issued on a petition for a writ of habeas corpus. It is the obligation of the State of the detaining authority in making its return to the rule in such a case to place all the relevant facts before the court and if there is any delay in making the order of detention or in arresting the detenu which is prima facie unreasonable, the State must give reasons explaining the delay. Here there is no explanation for the delay which has occurred at both stages and in the absence of such explanation, we are not at all satisfied that the District Magistrate, Burdwan applied his mind and arrived at a real and genuine subjective satisfaction that it was necessary to detain the petitioner with a view to preventing him from acting in a prejudicial manner. The condition precedent for the making of the order of detention was, therefore, not satisfied, and consequently, the order of detention must be quashed and set aside.

However, in our case there was no further affidavit affirmed by Timbalan Menteri to explain the delay of about one year. Since there is no explanation for the delay the subjective satisfaction of the Timbalan Menteri must be held to be not genuine or colourable.

I hold that the activities of trafficking in dangerous drugs against the applicant, Wong Kiih Sing, are too remote in point of law to justify the

A making of the detention order. So on this ground the writ of habeas corpus should be issued to the applicant Wong Kiih Sing in Criminal Application No 44-8-99 and that he be released forthwith.

Under s 2 of the Dangerous Drugs Act 1952 ('the DDA'), 'dangerous drug' means any drug or substance which is for the time being comprised in
B the First Schedule.

By the Dangerous Drugs (Amendment) Order 1997 (PU(A) 500) Part III of the First Schedule to the DDA was amended by inserting after the item 'Methadone — Intermediate' the item 'Methamphetamine' which came into force on 29 November 1997. So prior to 29 November 1997, the
C possession of methamphetamine or the trafficking in methamphetamine was not an offence under the DDA. In other words, it was an offence unknown to the law prior to 29 November 1997.

The position prior to 29 November 1997 is that the Timbalan Menteri could not exercise his power under s 6(1) of the Act to sign an order of
D detention against anyone for trafficking in methamphetamine.

From grounds 1 and 3, it is clear that the Timbalan Menteri took into consideration activities of the applicant prior to 29 November 1997. In ground 1, the activities of the applicant in trafficking syabu which contain methamphetamine is from end of 1996 to December 1998. In ground 3 the
E applicant from the end of 1996 till December 1998 obtained his supply of syabu which contain methamphetamine from a supplier in Sibu, Bintulu and Miri. So, there are two distinct periods. The first period is from end of 1996 till 28 November 1997. The second period is from 29 November 1997 to December 1998.

F Paragraph 8 of the affidavit of Dato' Ong Ka Ting, the Timbalan Menteri, reads as follows:

> Saya juga sesungguhnya menafikan pengataan di dalam perenggan-perenggan 14, 16 dan 17 afidavit pemohon dan menyatakan bahawa perintah tahanan tersebut hanya dikeluarkan setelah saya menimbangkan dengan penuh teliti laporan lengkap penyiasatan yang dikemukakan kepada saya oleh
G pihak polis dan juga pegawai siasatan dan juga setelah saya berpuashati bahawa pemohon terlibat dengan pengedaran dadah berbahaya secara berterusan semenjak tahun 1996 hingga bulan Disember 1998.

I am of the view that para 8 of the said affidavit clearly shows that the Timbalan Menteri took into consideration the activities of the applicant
H from end of 1996 till 28 November 1997 when such activities did not contravene any law.

In *Re Application of Tan Boon Liat @ Allen; Tan Boon Liat v Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors* [1976] 2 MLJ 83, his lordship Abdoolcader J (as he then was) at p 84 said:

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> I held in my judgment in *Yeap Hock Seng v The Minister for Home Affairs, Malaysia* [1975] 2 MLJ 279 that although the courts are precluded from adjudicating on the sufficiency of the subjective satisfaction of the Minister

they can examine the grounds disclosed by the Minister for the detention to see whether they are germane and relevant to the object which the Ordinance prescribes. In other words, it is open to the courts, in determining the validity of any order of preventive detention, to consider whether the grounds of the detention fall within the scope of the law as the preventive detention under which the order professes to be made. An order of detention based on irrelevant grounds is invalid and if any of the grounds furnished to the detenu are found to be irrelevant while considering the application of the relevant legislation under which the detention is ordered and in that sense are foreign thereto, the satisfaction of the detaining authority on which the order of detention is based is open to challenge and the detention order liable to be quashed (*Rameshwar Shaw v District Magistrate, Burdwan & Anor* (AIR 1964 SC 334)).

In *Dwarka Das Bhatia v The State of J & K* AIR 1957 SC 164, Jagannadhadas J (delivering the judgment of the Supreme Court) at p 165 said:

The grounds of detention as communicated to the petitioner on 31 May 1956, by the District Magistrate, Jammu, are as follows:

(1) That you carried on smuggling of essential goods to Pakistan through the Ferozpur and Amritsar border, but since the tightening of said borders you have recently shifted your smuggling activities to Ranbirsinghpura Pakistan borders in the State of Jammu and Kashmir and are carrying on illicit smuggling of essential goods such as cloth, sari and mercury to Pakistan through this border (thus affecting the economic condition of the public in Kashmir State adversely).

And at p 166, his lordship said:

(2) The point raised before us is that since the detention is based on the assumption that Shaffon cloth and sari as well as mercury are all essential goods and since two out of the three categories of the goods with reference to the smuggling of which the detention has been directed, are found not to be essential goods, the entire order is illegal, although one of the items, viz, mercury is an essential commodity. In support of this contention, the cases of this court in *Dr Ram Krishnan Bhardwaj v State of Delhi*, 1953 SCR 708; AIR 1953 SC 318 and *Shibban Lal Saksena v State of UP*, 1954 SCR 418; AIR 1954 SC 179 are relied upon. Learned counsel for the State of Jammu and Kashmir contends that the principle of these decisions has no application to the present case and attempts to distinguish the same. In order to understand the principle underlying these two cases, it is necessary to examine them in some detail.

And at p 168, his lordship said:

In *Keshav Talpade*'s, the learned judges stated as follows:

'If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them.'

(4) The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the court for the subjective satisfaction of the statutory authority. In applying these principles, however, the court must be satisfied that the vague or irrelevant grounds are such as, if excluded, might reasonably have affected the subjective satisfaction of the appropriate authority. It is not merely because some ground or reason of a comparatively unessential nature is defective that such an order based on subjective satisfaction can be held to be invalid. The court while anxious to safeguard the personal liberty of the individual will not lightly interfere with such orders. It is in the light of these principles that the validity of the impugned order has to be judged.

(5) In this case, the order of detention is based on the ground that the petitioner was engaged in unlawful smuggling activities relating to three commodities, cloth, zari and mercury of which two are found not to be essential articles. No material is placed before us enabling us to say that the smuggling attributed to the petitioner was substantially only of mercury and that the smuggling as regards the other two commodities was of an inconsequential nature.

The Timbalan Menteri did not state in his affidavit that omitting the allegation of facts that occurred prior to 29 November 1997 he would still have made the detention order based on facts that occurred after 29 November 1997. So I agree with the contention of the learned counsel for the applicant that the satisfaction of the Timbalan Menteri is based on irrelevant and extraneous matter in that he took into consideration the period of the activities of the applicant from the end of 1996 to 28 November 1997 when such activities were not contrary to law prior to 29 November 1997.

Further, if the Timbalan Menteri had applied his mind to the grounds he would have discovered that the period prior to 29 November 1997 should not be taken into consideration. I agree with the submission of the learned counsel for the applicant that this glaring mistake showed that the Timbalan Menteri treated the signing of the order in a casual and cavalier manner.

In conclusion, I am of the view that the Timbalan Menteri had acted mechanically and arbitrarily when he had taken into account extraneous or irrelevant material which the law did not contemplate he should consider and he had, in my view, purported to exercise his powers beyond the ambit of s 6(1) of the Act. As such, there was no strict compliance with the law.

I accordingly allow the habeas corpus application and order that the applicant be released forthwith. The two other kindred applications shall abide by this decision.

Application allowed.

Reported by Jafisah Jaafar